

Landmark award for asbestos victim

By Martyn Halle

A MAN dying from a lung disease has received £45,000 damages in the first case of compensation paid to someone who lived near an asbestos factory.

Gordon Prior, 42, is suffering from mesothelioma, a tumour of the lining of the lung caused by exposure to asbestos, although he never worked in the factory. He is racked with pain, has lost four stone in six months, and has difficulty breathing. He has been given only months to live.

Mr Prior grew up near an asbestos factory in Barking, east London, owned by Cape PLC. The factory closed in 1968, and earlier this month Cape paid the £45,000 into the High Court, before a full hearing in front of a judge, without accepting liability.

Lawyers and campaigners for people affected by asbestos-related illnesses now believe Cape and other companies could face demands for compensation from thousands of people. Cape has already paid millions to ex-workers. Now an even larger sum could be paid to residents who live or lived near their factories.

Rodney Nelson-Jones, Mr Prior's solicitor, said: "This is a landmark case and will undoubtedly open the doors for other people to take action. I have dealt with more than 600 asbestos settlements. This is the first time any-

one has received damages for 'neighbourhood' pollution by asbestos. It has been fairly easy for many years to recover damages on behalf of employees and bereaved relatives due to asbestosis and mesothelioma."

Mr Prior, who now lives in Dagenham, recalls how nobody in Barking worried about the "dusty snow" everywhere around the factory. "We used to touch it and play with it. It used to blow into our homes which were right next to the factory. The school was in the next street near the factory and we used to get the dust floating into the playground. So even children who didn't live near the factory were exposed."

"I am concentrating on enjoying the last few months of my life, although I know the pain is going to get worse. If my case helps other people bring successful actions against Cape then I feel I will have achieved something."

Because of the state of his health, preliminary court hearings were held at his house with lawyers and officials hearing evidence and arguing legal points at his bedside.

Mesothelioma is a fast-growing cancer which often lies dormant for decades before erupting.

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It took 80 years to act

THE 33-year-old man who came to consult Dr Montague Murray at London's Charing Cross Hospital seemed at first to be just another victim of bronchitis. But then he mentioned that the other nine men who had worked with him spinning the new miracle substance, asbestos, had all died in their thirties of the same condition. When he, too, perished less than a year later, Dr Murray found the heavy scarring of the lungs that came to be called asbestosis.

The year was 1899, and more than 80 years passed before asbestos use was properly regulated – a delay that allowed the killer dust to be spread so widely that most people in industrialised countries now have it in their lungs. The official response to the asbestos risk followed a familiar pattern: repeated assurances of safety; a dogged insistence on proof of damage to health; accusations of press hysteria; a failure to carry out research and then belated, poorly enforced, half-measures. Afterwards came the heavy human and economic cost of failing to take prompt action.

Asbestos is extraordinary stuff; fire resistant and virtually indestructible yet so fine and pliable that it can be spun like cloth. But its fineness makes it easy to breathe in and its indestructibility lets it stay in the lungs, and do its damage, over decades.

Governments have ignored the dangers for most of this century, writes **Geoffrey Lean**

Its value and danger have long been known. It was used 4,500 years ago to strengthen clay pots while the elder Pliny noticed that slaves who worked with it got lung disease. But it was not until 1879 that the mineral embarked on its deadly conquest of the world, when Samuel Turner, a Rochdale businessman, spun 10 tons of it to lag steam engines, and gave birth to Turner & Newall.

The complacency and wishful thinking began soon afterwards. Dr Murray reported on his asbestos victim to a government inquiry in 1906, but added: "One hears ... that considerable trouble is now taken to prevent the inhalation of the dust so that the disease is not so likely as heretofore."

No comprehensive study of British asbestos workers was done until 1928. When this found that 80 per cent of those who had been in the industry for over 20 years had asbestosis, the Chief Inspector of Factories promised the industry would be "safe" within a decade. It was not. The first regulations appeared in 1931, but they were insufficient and unenforced. Mr Turner wrote to Mr

Newall proposing "stretching the regulations for our own ends" and in the next 38 years, while workers died by the hundred, only two prosecutions were ever brought.

New hazards were emerging, only to be contested while "proof" was sought and disregarded after it was found. Lung cancers caused by asbestos were reported in the mid-1930s and found to be common 10 years later, but the link was not considered proved until 1955. It was the same with mesothelioma: 25 years passed after its emergence in the early 1940s before cause and effect were thought to be proved.

Even so, long-awaited regulations in 1969 aimed only to provide protection against asbestosis – and failed even to achieve that. Their "safety" levels were based on a single study carried out by Turner & Newall: one of the men who did the study admitted to me later that it was "not adequate for the purpose".

A series of articles in the *Yorkshire Post* in 1974 exposing an asbestos factory in Hebden Bridge where more than 250 workers died marked the beginning of the end. The local MP, Max Madden, started a campaign which led to a devastating inquiry and, eventually, to safety standards being so tightened that production effectively stopped. But by then the damage was done.

FRIDAY AUGUST 19 1994

Asbestos accord may herald end of US litigation

By Richard Lapper and Tim Burt

The end of multi-billion dollar litigation that has forced many asbestos companies to close and posed a threat to insurers, including many Lloyd's syndicates, could be in sight after the approval of a \$1.3bn (£830m) out-of-court settlement in the US.

Judge Lowell Reed, a federal judge in Philadelphia, this week approved the deal which involves 20 asbestos companies.

About 100,000 Americans who have been exposed to asbestos will be compensated if they contract certain diseases, in a deal negotiated between lawyers and the Center for Claims Resolution, an asbestos industry body formed to handle personal injury claims.

Under the scheme, victims of mesothelioma, a cancer of the lung lining, will receive between \$20,000 and \$200,000 and victims of other lung cancers between \$10,000 and \$86,000. Awards will be \$5,000 to \$32,000 for other cancers linked to asbestos exposure and between \$2,500 and \$30,000 for non-malignant diseases.

The total awards paid each year will also be capped, however, further reducing the average level of individual awards.

Britain's T&N, the second largest company represented by the Center, predicted yesterday that the settlement would significantly reduce its liability provi-

Deal could allay worst fears of Lloyd's Names

sions for asbestos-linked legal action.

Mr Colin Hope, chairman and chief executive, said: "It will restrict future liability and, once the transition to the new procedures is complete, result in a reduction in litigation costs over the next 10 years."

However, he ruled out such a scheme's being adopted in Britain, where claimants do not have the same recourse to product liability action as in the US.

T&N - which as Turner & Newall was Britain's main supplier of asbestos - also claimed that the overall incidence of asbestos-related diseases was on the decline.

The Center represents only about a quarter of the now largely defunct US asbestos industry. But Mr Lawrence Fitzpatrick, chief executive, said other former asbestos companies were interested in expanding the scheme which could serve as a model for resolving the problem. "This country has let the asbestos litigation get badly out of control," said Mr Fitzpatrick.

Some 200,000 legal claims - not covered by this week's deal - have been filed. Total costs

already amount to some \$10bn, with much of the burden falling on insurers. These insurers, who are expected to fund about two-thirds of the US settlement, should benefit from the deal.

Lloyd's Names may gain some relief from the settlement, which could allay their worst fears about huge claims in US courts. The extent of the London market's exposure to the companies involved in this week's settlement is not yet known.

However, final approval of the deal is uncertain, because lawyers acting for victims or potential victims are divided. Mr Ron Motley, an attorney acting for potential victims, said the decision "puts an end to asbestos gridlock that has meant victims dying on the court house steps."

But other lawyers oppose the deal and will appeal. Mr Brent Rosenthal of the Dallas-based lawyers, Baron & Budd, said people who have not yet developed asbestos-related diseases were in effect being asked to give up their legal rights, and he criticised the ceilings on the awards.

T&N set to gain from settlement, Page 15

MP asks why public helps out Names

LABOUR yesterday protested over millions of pounds in tax concessions given to loss-making Lloyd's Names.

Mr Alistair Darling, the party's City spokesman, called for tax "loopholes" helping the trouble-hit insurance underwriters to be closed.

He complained after a report in the Sunday Express disclosed that the struggling Names had been subsidised by £1300m from the public purse.

The report said this was enough to build 13 hospitals or take almost 1p off income tax and followed the Lloyd's losses of £8000m since 1988 which have left some Names in financial ruin.

Mr Darling said the Names, unlike ordinary investors, were regarded by the Inland Revenue as "sole traders".

It meant they were treated for tax purposes like companies and could offset their Lloyd's losses against other income.

Those who had well-paid jobs or profitable investments could reclaim tax.

They could also reclaim tax they had paid on their Lloyd's profits in previous years, or avoid tax should they make Lloyd's profits in future.

"Most people who have been struggling under an increasing tax burden over the last few years would be astounded that people who are already very rich should now be allowed to claw so much back from the taxpayer," said Mr Darling, MP for Edinburgh Central.

Mr Peter Hain, Labour MP for Neath, plans to table Commons questions over the £9m of public cash he estimates was spent subsidising 51 Tory MPs who are Names.

Mr Hain said: "Lloyd's Names are having it both ways, making millions in good years and saving millions from tax freebies in bad years. It's a case of heads they win, tails they win."

Mr Tom Benyon, a former Tory MP and director of the Society of Names, said: "Lloyd's Names are involved in a trade and where trade is lost it is perfectly legitimate to claim tax relief against other income."

"To seek to try to stop Lloyd's Names claiming tax relief is just another example of class warfare."

Exposed: 'safe' asbestos masks can

Demolition workers at risk as study reveals inadequate tests for protective breathing equipment

Ron McKay

PROTECTIVE breathing equipment used by demolition workers stripping asbestos is far less safe than manufacturers and the Government have claimed.

A new study shows that even the best respirators are up to 25 times less effective in the workplace than in laboratory tests on which safety standards are based. The report, by Robin Howie, a former Institute of Occupational Medicine researcher in Edinburgh, is expected to be published by the Health and Safety Executive in May.

Mr Howie, who refused to elaborate on his findings, said last week: 'The assumption has always been that laboratory performance will be the same as the workplace. It isn't. Respirator performance is very much lower than we have assumed in the past.'

His report is also expected to highlight the danger from old or ill-fitting masks that allow asbestos dust to enter the lungs. This is exacerbated when asbestos strippers work in enclosed spaces and sweat inside their protective clothing.

Nick Vaughan, an HSE scientist, says that laboratory tests for respirators involve wearers walking

around for 10-minute periods, moving their heads up and down and talking.

Dr Vaughan was involved last year in testing Sabre Phantom, a top-of-the-range respirator, after two workers stripping a ceiling in a former distillery in Perth were found to have asbestos deposits inside their masks. A factory inspector suggested that dust had been driven into the exhalation valves.

Tests carried out on site concluded that while the respirator met HSE standards 'no one was prepared to guarantee its absolute safety under these conditions'.

Dr Vaughan's subsequent report

concluded that in certain conditions 'large or high inertia particles' could enter the valve housing. The position of the valve on the face mask would tend to increase the possibility of this 'but the generic problem is probably common to all such power-assisted face masks'.

Asbestos dust and fibres can cause asbestosis, scarring of the lungs, lung cancer and mesothelioma, a cancer of the inner lining of the chest which is almost always fatal. There is no safe level for the inhalation of asbestos fibres, although the Government imposes 'control limits' which, if breached, can lead to prosecution.

For amosite and crocidolite — the most potent forms of asbestos, now banned in Britain — the limit is 0.2 fibres per millilitre of air breathed. Where atmospheric levels of asbestos are high, as in the Perth incident, a worker using even the most sophisticated equipment would be exposed to more than a million fibres in a nine-hour shift.

An HSE spokesman said the Howie report on the performance of respirators at work would be 'definitive'.

Terry Jago, chief executive of the Asbestos Removal Contractors Association, said: 'For years it was generally assumed in the industry

that respirators on their own were fit for the purpose. The HSE used to provide an approved list of respirators, and the manufacturers provided guarantees, and it's only very recently that they have withdrawn these.'

The asbestos removal industry employs around 6,000 people, a number declining each year as asbestos is stripped out of old buildings. However, deaths as a result of exposure to asbestos are expected to treble over the next 20 years. A report last year by Julian Peto of the Institute of Cancer Research predicted a peak of 3,300 deaths from mesothelioma in 2020.

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asbestos settlement

By Tim Burt

T&N, the British engineering and motor components group, has moved closer to burying its past as Britain's leading supplier of asbestos following a landmark court settlement in the US.

The settlement, announced in a Philadelphia federal court, establishes a framework for personal injury claims and should enable T&N to cut its liability provisions for asbestos-linked legal action.

Mr Colin Hope, chairman and chief executive, said yesterday those provisions - £21.1m last year - could be halved by the turn of the century and wiped out altogether within 10 years. "We're delighted at this decision, and I expect to see a favourable impact on our profit and loss account within two years."

T&N, forecast to report first-half profits of £50m next month, has been pursuing the US settlement for more than a year through the Center for Claims Resolution, representing 20 companies including National Services Industries, Pfizer and Union Carbide Plastics.

It claimed victory after US district Judge Lowell A. Reed supported a class action brought by the companies, under which they will together pay some \$1bn (£600m) over 10 years to settle asbestos cases awaiting adjudication in state and federal courts.

The decision was welcomed yesterday by City analysts, who said it could mark the end of T&N's exposure to asbestos cases. "This should lead to considerable savings on legal costs, especially as more than half the provisions relate to US cases," said Mr Colin Fell, at Kleinwort Benson. Mr Charles Burrows, at James Capel, predicted a gradual decline in claims.

They warned, however, that T&N would put the asbestos issue behind it only if it won its legal battle with Chase Manhattan, the US bank, which is claiming \$185m damages over contamination of its New York headquarters. Although Mr Hope said T&N was likely to win the case, lawyers for Chase Manhattan predicted that the New York courts would deal more robustly with the company than in previous hearings.

Mr Michael O'Connor, senior associate counsel and vice-president of Chase Manhattan, said: "We have spent millions bringing this lawsuit. We would not be spending those resources if we were not confident of a favourable outcome."

The company also faces the prospect of legal action by New York's Port Authority over asbestos used at the World Trade Center and LaGuardia airport. T&N's shares closed up 8p at 247p.

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By Alice Raw

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DEATH

VICTIMS OF THE DUST . .



Father-of-five Harry Smith was only 46 when he died.



Duncan Campbell left a wife and three children behind.



John Glasgow died before his claim could be settled.



John Thomson died last year. His claim was too late.

FOR the past 40 years, Joe Mullin's life has been tainted by the shadow of asbestosis.

He has watched friends and workmates die agonising deaths.

He is convinced it killed his wife and he realises that his own death will be slow and painful – and years before his time.

His courage is humbling.

For the disease that has ruined his life has also fuelled his fight for justice.

Joe is a member of Clydeside Action on Asbestos, a pressure group which campaigns for asbestosis sufferers.

The group also offer counselling and help to relatives.

A former insulation engineer, Joe used asbestos in sites all over the city.

Joe said: "We fight on behalf of our members for a better deal."

"The DSS say they have a 30 per cent success rate for pensions to men with asbestosis."

DIES

"But they have a 70 per cent rejection rate and that isn't good enough."

He added: "Under Scots law, if the man making a claim dies before his claim is settled, it dies with him."

"His widow then has to start all over again with a different claim."

"The insurance companies delay as long as they can."

"They know they can outwit the victim."

"We have written to every MP in Scotland to try and get this law changed but so far no-one has bothered."

'The ones who die young are lucky . . '

By LETITIA GAVIN

Joe is working on a book about the disease.

It makes grim reading. In Scotland, 82 women have died from asbestosis – because they washed their husband's work clothes.

In 1965, Joe's branch of the TGWU had over 650 members.

Today there are less than 50 left.

Last year, the group formed a list of 50 men who could give evidence for insurance claims.

Today 35 are dead – 26 of them this year.

Joe said: "We can't say which breath gave us asbestosis but we worked with it without protection because no-one told us we needed any."

"We have truly given our lives to the building industry."

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